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SUPREME COURT OF INDIANA

**OCTOBER TERM, 1950**

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**No. 28509**

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PAULINE PRUNK AND BYRON F. PRUNK,
*Appellants,*

*vs.*

INDIANAPOLIS REDEVELOPMENT COMMISSION OF THE DEPARTMENT OF REDEVELOPMENT OF THE CITY OF INDIANAPOLIS, PAUL L. McCORD, JOHN A. REIS, FRED T. GREENE, C. HARVEY BRADLEY, AND E. KIRK McKINNEY, COMMISSIONERS AND APPELLEES

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APPEAL FROM THE SUPERIOR COURT OF MARION COUNTY

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## JURISDICTIONAL STATEMENT

This is an appeal from the Supreme Court of the State of Indiana to this Court to test the validity of the Redevelopment Act of 1945, being Chapter 276 of the Acts of the General Assembly of the State of Indiana of 1945. This Act is popularly known and referred to as "The Slum Clearance Act of Indiana." The Legislature of the State of Indiana in 1945 enacted legislation wherein and whereby it declared the public policy of the State of Indiana to be the removal of slum areas and to create Redevelopment Commissions in certain districts with the power to declare cer-

tain areas within the jurisdiction of said commission as blighted areas. Under the Act such Redevelopment Commission was given the power to ascertain and determine such blighted areas and to institute proceedings to acquire the property in such blighted areas from the owner thereof. Said Commission was further empowered to sell and dispose of such property to other private owners, individuals and corporations. Such Commission was not required under the terms of said Act to convert the property that thus might be acquired from such owner to any public use such as the establishment of playgrounds, schools, parks, or public housing projects. But as already stated, said Commission through said proceedings could acquire the property of one individual and dispose of it to another individual for his private use and enjoyment.

This matter originated before the Redevelopment Commission of Indianapolis. The Indianapolis Redevelopment Commission, pursuant to said Act, adopted a Declaratory Resolution. The petitioners herein, Pauline Prunk and Byron F. Prunk, whose property was affected, each filed a remonstrance to this resolution. The Indianapolis Redevelopment Commission held public hearings upon the issues presented by the Declaratory Resolution and these petitioners' remonstrances thereto. Thereafter such Redevelopment Commission adopted what is known as a Confirmatory Resolution No. 1, Project "B". These proceedings were in accordance with procedure provided in said Redevelopment Act. Under the terms of said Redevelopment Act the petitioners herein were allowed and took an appeal to the Superior Court of Marion County, Indiana.

The Superior Court of Marion County, Indiana, stated its findings of fact and conclusions of law adversely to these petitioners.

Notwithstanding that Section 15 of the Redevelopment Act of 1945 expressly denied an appeal from the Superior

Court of Marion County, Indiana, these petitioners perfected an appeal to the Supreme Court of the State of Indiana. The Supreme Court of the State of Indiana declared Section 15 of such Act unconstitutional and decided favorably to the petitioners' contention that such right of appeal from said Superior Court existed in favor of said petitioners and that said Section 15 as above stated of said Act was unconstitutional.

The remonstrances of each of the petitioners herein filed before the Redevelopment Commission of the City of Indianapolis were overruled by said Commission. Said remonstrances stated, among other things, that the proposed action of the Redevelopment Commission of the City of Indianapolis was in contravention of the Constitution of the United States and in contravention of the Constitution of the State of Indiana.

The question presented in this matter before the Redevelopment Commission of the State of Indiana; on appeal from such Redevelopment Commission to the Superior Court of Marion County, Indiana; and in the Supreme Court of the State of Indiana, was whether or not the private property of the petitioners herein could be taken from them and sold to other individuals or corporations for their private use and enjoyment. The petitioners herein asserted that the action of the Redevelopment Commission of the City of Indianapolis and the action of the Superior Court of Marion County, Indiana, and the action of the Supreme Court of the State of Indiana in affirming such proceedings will result in the taking of the petitioner's property for the private use and enjoyment of others in contravention of the Fifth and Fourteenth Amendments to the Constitution of the United States and is in contravention of Section 21 of Article 1 of the Constitution of the State of Indiana. This question has never been decided by the Supreme Court

of the State of Indiana. Slum clearance legislation has been enacted by many of the states of the United States. The courts of last resort of such states have in many instances approved such legislation. Other states have disapproved such legislation. The petitioners believe that this question is a question of first impression in the Supreme Court of the United States; that if this appeal from the Supreme Court of the State of Indiana is entertained by the Supreme Court of the United States, the Supreme Court of the United States will for the first time as far as petitioners are aware, pass upon the validity of state legislation concerning so-called slum clearance projects. Consequently, the question herein involved not only concerns the validity and constitutionality of the legislation of the State of Indiana, but will no doubt also serve as a guide and precedent to analagous legislation in other states of the United States.

This appeal is predicated upon Title 28, Section 1257, Sub-section 2, U. S. C. A. (C. 646, 62 Statutes 929).

The Redevelopment Act of 1945 is in contravention of the Fifth Amendment to the Constitution of the United States (page 102, U. S. C. A.) wherein it is provided that no person shall be deprived of his property without due process of law.

And in contravention of the Fourteenth Amendment of the Constitution of the United States, Section 1 thereof, (page 2, U. S. C. A.) which provides that no state shall deprive any person of his property without due process of law; and in contravention of Section 21, Article 1, of the Constitution of the State of Indiana, (Burns Indiana Statutes, Annotations 1933) which provides that no man's property shall be taken without just compensation, which has been held to mean by the Supreme Court of the State of Indiana that private property can not be appropriated for private use.

The Supreme Court of the State of Indiana declared the Redevelopment Act of 1945 to be constitutional, except Section 15 thereof, which prohibited appeal. This application for appeal was presented to the Supreme Court of the State of Indiana on the 29th day of January, 1951.

The Redevelopment Act of 1945 provides that private property may be taken for private use. Section 1 of the Fourteenth Amendment to the Constitution of the United States, as well as the Constitution of the State of Indiana prohibits the taking of private property without due process of law. This has been interpreted to mean both by the Supreme Court of the United States and the Supreme Court of the State of Indiana that private property can not be taken for private use.

*Missouri Pac. R. Co.* v. *Nebraska,* 164 U. S. 403, 41 L. Ed. 489, 17 Sup. Ct. 130;

*Dalche* v. *Board of Comrs. of Orleans Levee Bd.,* 49 Fed. (2d) 374;

*Fountain Park Co.* v. *Hensler,* 199 Ind. 95, 155 N. E. 465, 50 A. L. R. 1518;

*McInnes* v. *McKay,* 1928, 141 A. 699, 127 Me. 110, affirmed 1929, 49 S. Ct. 344, 279 U. S. 820, 73 L. Ed. 975.

The Indianapolis Redevelopment Commission adopted Declaratory Resolution 1, Project "B" on January 2, 1948 (Transcript page 49 and page 224).

The petitioner, Byron F. Prunk, filed his remonstrance April 7, 1948 (Transcript page 29).

The petitioner, Pauline Prunk, filed her remonstrance April 13, 1948. (Transcript, page 27).

The Indianapolis Redevelopment Commission overruled the petitioners' remonstrances and adopted Confirmatory

Resolution 1, Project "B", April 13, 1948 (Transcript page 25).

The petitioners prayed and took an appeal to the Superior Court of Marion County, as provided by the Redevelopment Act of 1945. The case was submitted for trial before the Superior Court and the Superior Court stated its findings of facts and conclusions of law adversely to the petitioners June 4, 1945 and sustained the action of the Redevelopment Commission. (Transcript page 44). The Superior Court of Marion County overruled the petitioners' motion for a new trial in that Court October 1, 1948. (98).

The Supreme Court of the State of Indiana entered a judgment against the petitioners, confirming the judgment of the Superior Court of Marion County June 27, 1950.

The petitioners' petition for a new hearing in the Supreme Court of Indiana was denied October 31, 1950.

Each of the petitioners' remonstrances alleged that the action of the Redevelopment Commission of the City of Indianapolis was in contravention of the Constitution of the United States and the Constitution of the State of Indiana.

The proceedings in the cause, as set out above, including the initial action before the Redevelopment Commission of the City of Indianapolis, through the appeal to the Superior Court of Marion County, and finally to the Supreme Court of the State of Indiana, have supported the legislation of the Redevelopment Act of 1945, and have approved the taking of private property for private use, all in contravention of Section One of the Fourteenth Amendment.

The decision and opinion of the Supreme Court of the State of Indiana confirming the judgment of the Superior

Court of Marion County, Indiana, is filed herewith and made a part of this statement.

Respectfully Submitted,

EDWIN M. S. STEERS,
SETH S. WARD,
JAMES C. JAY,
BY JAMES C. JAY,
*Attorneys for Appellants.*

## APPENDIX "A"

THE STATE OF INDIANA, IN THE SUPREME COURT, MAY TERM, 1950

On the 27th day of June, 1950, being the 32nd Judicial day of said May Term, 1950.

No. 28509

Hon. James A. Emmert, Chief Justice, Hon. Frank E. Gilkison, Hon. Howard Young, Hon. Oliver Starr, Hon. Paul G. Jasper, Associate Judges.

IN THE CASE OF PAULINE PRUNK, BYRON F. PRUNK, Appellants,

vs.

INDIANAPOLIS REDEVELOPMENT COMMISSION OF THE DEPARTMENT OF REDEVELOPMENT OF THE CITY OF INDIANAPOLIS, PAUL L. MCCORD, ET AL., Appellees

Appealed from the Marion County Superior Court

Come the parties by their attorneys, and the Court being sufficiently advised in the premises, gives its opinion and judgment as follows, pronounced by Emmert, C. J.

Starr, J., and Young, J., Concur in the result

Jasper, J., Not participating.

This appeal involves procedural rights under the "Redevelopment Act of 1945," hereafter referred to as the act, § 48-8501, et seq., Burns 1949 Supplement, (Acts 1945, Ch. 276). Appellee filed a motion to dismiss the appeal, and we deferred ruling thereon until after the cause was briefed on the merits, which has not been done.

The Indianapolis Redevelopment Commission on January 2, 1948, adopted a declaratory resolution declaring certain real estate owned by the appellants to be a blighted area, and that it would be a public utility and benefit to the city and its inhabitants to acquire and redevelop it in accordance with plans of the commission adopted pursuant to the act.

The declaratory resolution was submitted to and approved by the Plan Commission of the City of Indianapolis, after which notice was given for a hearing on the preliminary resolution on April 7, 1948, as provided by § 14 of the Act (§ 48-8514, Burns 1949 Supplement). The appellants filed separate remonstrances to the proceedings in which each alleged as follows:

> "It will not be of public utility and benefit to acquire the aforedescribed area for the purpose of redevelopment as specified in said declaratory resolution. That the proposed plan of redevelopment will result in great and irreparable damage and hardship to this petitioner and such action is in contravention of the Constitution of the United States of America and in contravention of the Constitution of the State of Indiana."

The Indianapolis Redevelopment Commission then overruled each remonstrance, and declared that it would be of public utility and benefit to proceed with the plan of redevelopment as set forth in the declaratory resolution, and finally approved the same. Both appellants filed and perfected an appeal to the Superior Court of Marion County, in which they stated they appealed from the final action of the commissioners, and reserved all legal rights given by the laws of the State of Indiana.

During the hearing on the appeal, counsel for appellants made and entered of record the following motion:

> "Comes now Pauline Prunk and Byron F. Prunk * * * and separately and severally dismiss their action solely but not the appeal in this case."

The trial court, after requesting appellants to clarify their action, made the following entry:

> "Come again the parties by counsel, and it appearing that the appellants have heretofore dismissed their 'cause of action,' but not their 'appeal' and counsel for appellants in open court states that by 'cause of action,' he meant his 'remonstrance,' and the court

feeling that when said 'remonstrance' is dismissed, nothing remains to be tried by this court; but inasmuch as appellants have reserved their 'appeal' and such action appearing ambiguous and contradictory, the court holds that said 'appeal' is not dismissed, and orders said appeal to be continued and proceed to trial by way of review."

The court filed a special findings of fact and conclusions of law thereon. The seventh finding stated:

"The findings made by the Indianapolis Redevelopment Commission that it would be of public utility and benefit to proceed to acquire the blighted area described as Project B and with the redevelopment plan provided for therein, has a reasonable basis for support, and was supported by substantial evidence which the Indianapolis Redevelopment Commission had before it. It will be of public utility and benefit to acquire the blighted area described in Exhibit A attached hereto for the purpose of redevelopment under the Redevelopment Act of 1945."

The conclusions of law are as follows:

"The law is with the appellees. The Indianapolis Redevelopment Commission has complied with all statutory procedural requirements. The action of the Indianapolis Redevelopment Commission in adopting Confirmatory Resolution One Project B. was within its powers and the action taken by it was legally taken and should be sustained. The remonstrances of appellants should be overruled and judgment entered accordingly."

We hold, under the authorities later discussed, that the trial court's ruling with reference to the dismissal of the remonstrance, and the retention of jurisdiction to "proceed to trial by way of review," was correct.

In *State ex rel. Prunk* v. *Superior Court of Marion County* (1948), 226 Ind. 235, 236, 79 N. E. (2d) 215, 216, which

involved an attempt to take a change of venue from Marion County by the present appellants, this court said:

> "Said cause so pending in the Superior Court is a proceedings to review the official finding and order of the Indianapolis Redevelopment Commission * * *"

This decision became and is the law of the case in subsequent proceedings and appeals. *State ex rel. Joint County Park Board* v. *Verbarg* (1950),—Ind.—, 91 N. E. (2d) 916, and authorities therein cited.

The appellees insist that § 15 of the act, § 48-8515, Burns 1949 Replacement, limiting the right of appeal, is valid. This section limits the right of review by the Marion Superior Court to the question of the public utility and benefit in acquiring the blighted area in question for the purpose of redevelopment under the provisions of the act, and further provides that there shall be no appeal from the judgment of the trial court.

In *Warren* v. *Indiana Telephone Co.* (1940), 217 Ind. 93, 26 N. E. (2d) 399, this court held it was beyond the constitutional power of the legislature to prohibit a review by the courts of the findings of an administrative body, and neither could the legislature prohibit this court from exercising its constitutional right to review the judicial action of the appellate court. In speaking of the right of review, Judge Shake, speaking for the court, said:

> "Strictly speaking, there is no such thing as an appeal from an administrative agency. It is correct to say that the orders of an administrative body are subject to judicial review; and that they must be so to meet the requirements of due process. Such review is necessary to the end that there may be an adjudication by a court of competent jurisdiction that the agency has acted within the scope of its powers; that substantial evidence supports the factual conclusions; and that its determination comports with the law applicable to the facts found." (P. 105.)

In *Board of Medical Registration and Exam.* v. *Moore* (1947), 224 Ind. 621, 625, 70 N. E. (2d) 354, this court quoted

with approval the statement in *Public Service Commission* v. *City of LaPorte* (1935), 207 Ind. 462, 193 N. E. 668, as follows: " 'The power of the courts to confine administrative boards and commissions within their constitutional jurisdiction, and to enjoin unreasonable administrative or legislative orders or regulations, is not derived from the statute, but exists through and under the Constitution.' "

In *Joseph E. Seagram & Sons* v. *Board of Com'rs., etc.* (1943), 220 Ind. 604, 45 N. E. (2d) 491, the appellee contended that the statutory provisions of the Flood Control Act (§ 48-4931, Burns 1933 Supplement), that "There shall be no appeal from such judgment, and after the entry of such decree the establishment of said district shall not be questioned in any action or proceeding, except as herein otherwise expressly provided," were conclusive and that the appeal should be dismissed. But upon the authority of *Warren* v. *Indiana Telephone Co.* (1940), 217 Ind. 93, 26 N. E. (2d) 399, *supra*, and *State ex rel. White* v. *Hilgemann, Judge* (1941), 218 Ind. 572, 34 N. E. (2d) 129, it was held that the legislature could not take from the Supreme Court its constitutional appellate jurisdiction. This holding necessarily included the right to a review by the trial court before its action could be reviewed by this court.

Therefore, we hold that the provision of §15 of the act, § 48-8515, Burns 1949 Supplement, denying an appeal from the judgment of the trial court, is unconstitutional, and that the right of the trial court to review the proceedings of the Redevelopment Commission could not be limited to the question of public utility and benefit to acquire the blighted area in question for the purpose of redevelopment under the provisions of the act.

However, it does not appear from the special findings and conclusions of law thereon, that the constitutional questions now sought to be raised were ever properly presented to the trial court. The remonstrances, which were dismissed, did not specify any provision, either by section, article, or by identifiable reference, of either the federal constitution or the constitution of Indiana, that was violated. Nor did the pleading whereby the appeal was taken assert the violation of any constitutional right. When a provision

of a constitution is asserted to be violated it should be pointed out with such certainty that the trial court and this court have no difficulty in determining what part of the constitution is violated by it.

*In Re Petition of Pittsburgh, etc., Ry. Co.* (1897), 147 Ind. 697, 47 N. E. 151;
*Edenharter, Supt.* v. *Connor* (1916), 185 Ind. 643, 114 N. E. 212;
*Simmons* v. *Simmons* (1917), 186 Ind. 575, 116 N. E. 49;
*Overshiner* v. *State* (1901), 156 Ind. 187, 59 N. E. 468;
*Levy* v. *State* (1903), 161 Ind. 251, 68 N. E. 172;
*Manley* v. *State* (1925), 196 Ind. 529, 149 N. E. 51;
*Luttrell* v. *State* (1932), 204 Ind. 116, 183 N. E. 818;
12 C. J. 785, § 216.

Even if it be conceded that the allegations of the remonstrance were sufficiently definite to raise a constitutional issue, yet the remonstrance was dismissed on motion of the appellants so that there was nothing of record before the trial court presenting any constitutional issue. Nor do the special findings and conclusions show that the trial court considered any such issue. We must hold, under this state of the record, that there is no constitutional issue on the merits presented here.

The motion to dismiss is overruled, and the judgment of the trial court is affirmed.

Starr and Young, JJ. concur in result.

Jasper, J. not participating.

MARCH 26, 1951.

*Per Curiam Decision.*

No. 585. PRUNK ET AL. *v.* INDIANAPOLIS REDEVELOPMENT COMMISSION ET AL. Appeal from the Supreme Court of Indiana. *Per Curiam:* The appeal is dismissed for the want of a substantial federal question. *Edwin M. S. Steers* for appellants. Reported below: 228 Ind. 579, 93 N. E. 2d 171.